

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	FINAL ORDER
64545-g76H BY MIKE MCBRIDE)	

* * * * *

On November 1, 1988, the Department of Natural Resources and Conservation (Department) issued an Interlocutory Order in this matter which stated, in part:

That a final decision regarding issuance of Beneficial Water Use Permit No. 64545-76H by Mike McBride be postponed for a period of three years from the date hereof. At the end of the three year period (or sooner if requested by Applicant), the department will evaluate aquifer recharge efforts made either by Applicant alone, or in concert with other appropriators in the Larson Creek Controlled Groundwater Area. If the department finds that such efforts have resulted in augmentation of recharge to the aquifer by at least .775 of an acre-foot per annum, the Permit will be granted with the condition that Applicant may only divert to the extent of such augmentation, and with such other and further conditions as may be necessary to protect other appropriators. If the Department finds no such recharge augmentation, or finds that such augmentation will more often than not be less than .775 acre-foot per annum, the Permit will be denied.

Each party in this matter, including Applicant, was mailed a copy of the Interlocutory Order which included a Notice that the Order could be appealed. No appeal was filed, nor did the Department receive any written objection or exception to the Interlocutory Order.

The Department gave Applicant the full three-year period in which to fulfill the requirements of the Interlocutory Order.

Soon after the three years had passed the Department requested

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Applicant provide the information it needed to assess the status of the Application in accordance with the Interlocutory Order so as to make its final decision in this matter. On December 18, 1991, the Department issued an Order requiring that Applicant submit, in writing, a report containing a discussion of the efforts employed and the results of those efforts, accompanied by data and materials conclusively supporting the results, to the Department's Missoula Water Resources Regional Office and allowed Applicant until January 31, 1992, to do so. The Order stated that failure to submit said report would be interpreted by the Department as evidence the recharge efforts were not conducted or, if conducted, did not meet the augmentation level prescribed in the Interlocutory Order, and the permit would be denied.

Applicant submitted a report that stated the aquifer recharge augmentation plan would be part of an upcoming application by the recently-formed Larson Creek Water Users' Association to import Sharrott Creek water. In light of the new circumstances resulting from creation of the Association, the Department again delayed making a decision on the above-entitled application pending receipt of the change application. Application to Change Appropriation Water Right G(W)43186-76H was received by the Department proposing to change the place of use of Sharrott Creek water to the Larson Creek area. Application G(W)43186-76H contained no provision, however, for aquifer recharge augmentation. The Department informed Applicant of this deficiency in writing and provided Applicant with yet another opportunity to

inform the Department of how the aquifer recharge augmentation would be accomplished. It is now July 29, 1992, and no response from Applicant has been received. Applicant has failed to fulfill the requirement expressly stated in the Department's Interlocutory Order, hence the Department can no longer delay making its final decision in this matter.

Therefore, based on the record in this matter, the Findings of Fact and Conclusions of Law contained in the September 29, 1988, Proposal for Decision, and pursuant to its November 1, 1988, Interlocutory Order and its December 18, 1991, Order, the Department makes the following:

FINAL ORDER

Application for Beneficial Water Use Permit 64545-g76H by Mike McBride is denied.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

Dated this 29 day of July, 1992.



Gary Fritz, Administrator
Department of Natural Resources
and Conservation
Water Resources Division
1520 East Sixth Avenue
Helena, Montana 59620-2301
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 30th day of July, 1992, as follows:


Mike McBride
535 Timber Trail
Stevensville, MT 59870

Thomas J. Beers
Attorney at Law
234 East Pine
Missoula, MT 59807-7525

Dee MacPherson
Lolo Creek
Lolo, MT 59847

Maurice and Esta M. Owen
463 Timber Trail
Stevensville, MT 59870

Mike McLane, Manager
Missoula Water Resources
Regional Office
Holiday Village Professional
Plaza, Suite 105
P.O. Box 5004
Missoula, MT 59806
(via electronic mail)


Cindy G. Campbell
Hearings Unit Legal Secretary

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	FINAL ORDER
NO. 64545-76H BY MIKE MCBRIDE.)	

* * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. Written comments regarding McBride's relationship with other appropriators in the Larson Creek Controlled Groundwater Area were received; however, no timely written exceptions or objections specifically addressing elements of the Proposal for Decision were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the September 29, 1988 Proposal for Decision and incorporates them herein by reference.

WHEREFORE, based on the record herein, the Department makes the following:

INTERLOCUTORY ORDER

That a final decision regarding issuance of Beneficial Water Use Permit No. 64545-76H by Mike McBride be postponed for a period of three years from the date hereof. At the end of the three year period (or sooner if requested by Applicant), the department will evaluate aquifer recharge efforts made either by

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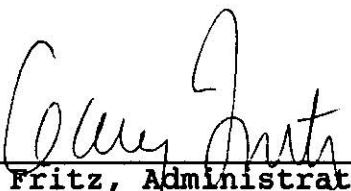
Applicant alone, or in concert with other appropriators in the Larson Creek Controlled Groundwater Area. If the department finds that such efforts have resulted in augmentation of recharge to the aquifer by at least .775 of an acre-foot per annum, the Permit will be granted with the condition that Applicant may only divert to the extent of such augmentation, and with such other and further conditions as may be necessary to protect other appropriators. If the department finds no such recharge augmentation, or finds that such augmentation will more often than not be less than .775 acre-foot per annum, the Permit will be denied.

Nothing herein shall be construed to authorize Applicant to appropriate water for recharge purposes without first complying with all requirements of law or rule otherwise required to make such appropriation.

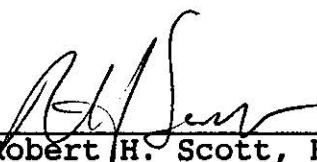
NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

Dated this 1 day of ^{November}~~October~~, 1988.



Gary Fritz, Administrator
Department of Natural
Resources and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6605



Robert H. Scott, Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6625

CERTIFICATE OF SERVICE

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Mike McBride
535 Timber Trail
Stevensville, MT 59870

Dee MacPherson
Lolo Creek
Lolo, MT 59847

Thomas J. Beers
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Maurice and Esta M. Owen
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Missoula, MT 59806

Mark Shapley, Hydrogeologist
1520 East Sixth Avenue
Helena, MT 59620-2301


Irene LaBare
Legal Secretary

CASE # 64545

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 64545-76H BY MIKE MCBRIDE)

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on July 29, 1988 in Missoula, Montana.

Applicant, Mike McBride, appeared in person and was represented by Thomas J. Beers, attorney at law.

Objectors Maurice and Esta M. Owen were represented by said Esta M. Owen.

Mark Shapley, hydrogeologist for the Water Resources Division of the Department of Natural Resources and Conservation (hereafter, "department" or "DNRC") appeared as department staff witness.

Mike McLane, Field Manager of the Missoula Field Office of the DNRC Water Rights Bureau appeared as department staff witness.

Exhibits

Applicant offered three exhibits for inclusion in the record.

Applicant's Exhibit 1, a memorandum from Mark Shapley to Mike McLane dated January 5, 1988 consisting of nine pages of text and six figures, was admitted without objection.

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Applicant's Exhibit 2, a graph of static water levels in Applicant's well made by Applicant from records compiled for the period of April 1986 to July 1988, was admitted without objection.

Applicant's Exhibit 3, a map of the Larson Creek Controlled Groundwater Area with three circles of equal radius drawn around foci representing the location of the wells of Objectors and Applicants, was admitted without objection, but with the provision that the radii of the circles as drawn did not accurately represent a distance of 263.3 feet.

Objector MacPherson offered no exhibits.

Objector Owen offered no exhibits.

Department Exhibit 1, a preliminary draft of a "Report to the Board of Natural Resources and Conservation on the Larson Creek Groundwater Control District" by Mark Shapley containing six pages of text and five figures, was admitted without objection.

There was no objection to any of the contents of the Department file.

FINDINGS OF FACT

1. MCA §85-2-302 provides, that with certain exceptions inapplicable here, "a person may not appropriate water or commence construction of diversion, impoundment, withdrawal or distribution works therefor except by applying for and receiving a permit from the department."

2. The Application was regularly filed on December 23, 1986 at 8:32 a.m.

3. The Application is for 1.00 gallon per minute up to 0.775 acre-foot per year of groundwater to be diverted by well and pump in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, Township 9 North, Range 20 West Ravalli County, Montana, for year round domestic use and lawn and garden irrigation between April 15 and September 15, inclusive, in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, Township 9 North, Range 20 West, Ravalli County, Montana.

At the hearing, Applicant amended the Application downward by stating that he actually sought a flow rate of only .75 gpm.

4. The pertinent facts of the Application were published in the Ravalli Republic, a newspaper of general circulation in the area of the source, on February 25, 1987 and March 4, 1987. Timely objections were received from Dee MacPherson and Maurice and Esta M. Owen. A notice of this hearing was served on all parties on June 17, 1988.

5. The source of the water requested under this application is groundwater occurring in the Larson Creek Temporary Controlled Groundwater Area, Ravalli County, Montana. On November 7, 1986, the Board of Natural Resources and Conservation issued an Order which provides inter alia that:

During the period of temporary controlled designation, the shallow aquifer shall be closed to further appropriation except by the issuance of a permit for beneficial water use by the Department for uses applied for prior to January 1, 1987. The Department shall accept Applications for Beneficial Water Use Permits to appropriate groundwater from the shallow aquifer as follows:

a) Each Application for Beneficial Water Use Permit to appropriate by means of a well shall be submitted to the Missoula Area Water Right Bureau Field Office. Upon receipt, Department personnel shall plot the proposed well site on a prepared map of the controlled area. Around each

existing well will be plotted a circle, with the existing well being in the center thereof, and the radius of the circle being 263.3 feet. Such a circle will also be plotted around the proposed well site. No Application for Beneficial Water Use Permit to appropriate by means of a well of less than 70 feet in depth will be approved for issuance of a permit where the circle around the proposed site intersects the circle around any existing well unless the applicant proves by clear and convincing evidence that the proposed use will not impair or substantially interfere with existing rights to appropriate groundwater within the circle. All permit applications will follow the normal Department permit processing steps prior to issuance or denials, except that any wells permitted to a depth of more than 70 feet within the geographical area of the Controlled Groundwater Area will be required to be constructed in such a manner that no well has perforations tapping the controlled aquifer and that the controlled aquifer be sealed off with grout to prohibit leakage from the controlled aquifer to other aquifers. The Department will impose such other and further conditions on a case by case basis, as may be necessary to protect the aquifer of concern.

See In the Matter of the Larson Creek Temporary Controlled Groundwater Area, Ravalli County, Montana, Order Extending Temporary Designation for an Additional Two-Year Period, November 7, 1986.

6. The well to be used hereunder has already been completed and cased. It produces water at a depth of 70 feet, extracting said water from the controlled aquifer. A circle of 263.3 feet plotted around Applicant's well site intersects similar circles plotted around the wells of Objectors Owen and MacPherson. Applicant's circle does not intersect similar circles plotted around the wells of any other appropriators in the area.

7. The possible effects on other appropriators on the Larson Creek aquifer due to operation of Applicant's well are: (1) well drawdown due to local well interference, i.e., due to reduction in hydrostatic head in the vicinity caused by the local potentiometric

effect of Applicant's pumping (cone of depression); and (2) a lowering of well water levels due to a lowering of the average water table of the aquifer (reduction of total aquifer storage).

8. Historically, continuing pumping at a rate of .75 gpm over a period long enough to establish a near-equilibrium cone of depression in the aquifer could result in a maximum 2 foot drawdown in the Owen and MacPherson wells due to well interference assuming no aquifer recharge. However, the theoretical drawdown in said wells will be ameliorated by recharge from Larson Creek (when it flows), by the steep area-wide potentiometric gradient, and by the fact that Applicant does not intend to, and could not under the applied-for permit, pump continuously. Accordingly, actual well interference effects on the Owen and MacPherson wells will be negligible. (Testimony of Mark Shapley, Department's Exhibit 1, Applicant's Exhibit 1.)

9. The Larson Creek aquifer is structured so that a reduction in total aquifer storage will first lower the levels of wells located in the upper end of the system. Further reduction in total aquifer storage will lower the levels of wells further down gradient until the aquifer is totally depleted. (Testimony of Mark Shapley, Department Exhibit 1, Applicant Exhibit 1.)

10. Approximately 30 acre-feet of water is naturally discharged annually from the Larson Creek aquifer. Somewhat less than this is used consumptively by all wells in the area. These two factors constitute total annual discharge from the aquifer.

Since 1985, total aquifer storage has been reduced due to the fact that total annual recharge has been less than total annual discharge. It appears that this reduction is a continuing phenomenon, engendered primarily by conversion of surface water conveyancing from unlined ditch to pipeline, rather than transient (a result of normal variations in climate). Regardless, this reduction has already resulted in lowering of well levels, most significant in wells at the upper end of the aquifer.

11. Operation of Applicant's well could increase the annual discharge from the aquifer by up to .775 acre-foot. Any increase in discharge will increase the rate of loss of total aquifer storage, assuming no equivalent increase in recharge. However, this appropriation would increase total annual discharge by less than two percent (total annual discharge is on the order of 40 acre-feet per annum, 30 acre-feet due to natural discharge plus approximately 10 acre-feet due to present appropriations--see department records).

12. Neither Applicant's well, nor the Owen and MacPherson wells, are located in the upper end of the aquifer.

13. Applicant intends to pump enough water to fill a 1000-gallon storage tank, and utilize the stored water to supplement water pumped for immediate use. Assuming no tank withdrawals, at .75 gallons per minute it would require 22.2 hours of continuous pumping to fill the tank. With simultaneous withdrawals, it would require somewhat longer to fill the tank. Applicant could utilize water from the tank for four to five days without pumping.

Applicant has operated the well in this fashion for several years and water has always been physically present when required.

14. The record contains no evidence of other planned uses or developments for which a permit has been issued or for which water has been reserved.

15. Objector Owen has successfully introduced recharge to the aquifer artificially. The present appropriators from the aquifer are contemplating implementation of a larger scale artificial recharge project.

CONCLUSIONS OF LAW

1. The department has jurisdiction over the subject matter hereunder and over the parties hereto. MCA Title 85, Chapter 2, Part 3 (1985).

2. The department gave proper notice of the hearing and, all substantive and procedural requirements of law and rule appearing fulfilled, the matter is properly before the Examiner.

3. Applicant seeks to appropriate .75 gpm up to .775 acre-foot per year of groundwater within the boundaries of the Larson Creek Controlled Groundwater Area. Findings of Fact 3, 5. MCA §85-2-508 provides, "a person may appropriate groundwater in a controlled area only by applying for and receiving a permit from the department in accordance with part 3 of this chapter."

4. MCA §85-2-311(1985) provides, "the department shall issue a permit if the Applicant proves by substantial credible evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply:

(i) at times when the water can be put to the use
proposed by the applicant;

- (ii) in the amount the applicant seeks to appropriate; and
 - (iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;
- (b) the water rights of a prior appropriator will not be adversely affected;
 - (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
 - (d) the proposed use of water is a beneficial use;
 - (e) The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

5. Because this Application contemplates appropriation from the Larson Creek controlled area, Applicant must, in addition to proving the criteria set forth in MCA §85-2-311, prove by clear and convincing evidence that the proposed use will not impair or substantially interfere with existing rights to appropriate groundwater from the wells of Objectors Owen and MacPherson. (Owen and MacPherson are the only appropriators in the controlled groundwater area whose well circles of 263.3 feet radii are intersected by a similar circle plotted around the McBride well site. See Findings of Fact 5 and 6.)

6. Applicant argues that the condition imposed by the Board (see Finding of Fact 5) requires only that Applicant provide clear and convincing evidence that there will be no adverse effect to the rights of objectors due to well interference. The Examiner agrees.

The Board's Order does not expressly limit the scope of inquiry

to well interference effects. However, the Order does not require that Applicant prove no impairment to existing wells outside a certain proximity to a proposed well; rather it requires such proof as to only those appropriations "within the circle."

Those appropriators inside the intersected circle are the most likely to be affected by well interference, a danger which is diminished with increasing distance. Accordingly, as it relates to well interference, the condition is logically drawn. However, if read to mandate consideration of impairment of existing rights due to reductions in total aquifer storage (due to increased withdrawals), the condition is under-inclusive; reduction in aquifer storage affects the aquifer in a non-localized way. See Findings of Fact 9, 10. In this case, those parties specifically excluded from consideration under this condition, i.e., those with wells in the upper aquifer, are the appropriators who would be most affected.

The only record evidence of the Board's intent is a memorandum attached to the August 16, 1984 Proposal for Decision (subsequently adopted by the Board in its Order of November 16, 1984) which explains that banning wells which would be within a certain proximity of existing wells "ensures that no wells will be so close as to interfere with each other, as well as that an absolute limit will be imposed on the number of wells tapping the aquifer in issue". However, because the November 17, 1986 Order Extending Temporary Designation removed the ban, there is no longer an absolute limit on the number of wells which may tap the aquifer.

Whether the ban was initially intended to limit aquifer depletion is not known.¹ However, with removal of the ban, the conditions set forth by the Board would allow substantial aquifer depletion unless the proposed well were to be located in the upper aquifer. In the instant case, even if Applicant proved no adverse effect to Owen and MacPherson due to aquifer depletion, substantial depletion of the aquifer could continue (at least to the point where wells proximate to the Applicant would be affected).

Because the condition is under-inclusive, the Examiner concludes that it is not intended to prevent aquifer depletion. Accordingly, the Examiner further concludes that the Board intends only that Applicant prove by clear and convincing evidence that Objectors will not be adversely affected due to well interference.

7. After conducting lengthy studies of the aquifer, department hydrogeologist, Mark Shapley, concluded that any well interference effects to Objectors' wells which might be caused by operation of Applicant's well would be negligible. There was no conflicting testimony, and the opinion of this expert witness appears well founded. Accordingly, the Examiner concludes that the record contains clear and convincing evidence that the proposed appropriation will not cause well interference sufficient to impair or substantially interfere with the existing rights of Objectors Owen and MacPherson to appropriate.

¹Limiting the number of wells, without also placing a limit on the total allowable annual withdrawal per well, would not appear to be a very effective method of limiting total aquifer withdrawal.

8. As has heretofore been stated, the condition imposed by the Board does not require proof by clear and convincing evidence that appropriators will not be adversely affected by aquifer storage depletion. See, Conclusion of Law 6, supra. However, sufficient evidence has been produced to place the issue at bar as relevant to proof of the criterion codified as MCA §85-2-311(1)(b).

Additionally, the Examiner believes that the provisions of MCA §85-2-508 require that Applicant prove the proposed appropriation will not unreasonably deplete aquifer storage in a controlled groundwater area, regardless of whether evidence on the issue has been produced by other parties to the proceeding. Accordingly, the Examiner holds that Applicant must prove by a preponderance of substantial credible evidence that the proposed appropriation will not adversely affect other appropriators by aquifer depletion.

The evidence shows that aquifer storage is presently being depleted due to loss of aquifer recharge. The loss of recharge appears to be a continuing trend (rather than a climatic or cyclic phenomenon), and continued reduction (which it appears will occur unless recharge is somehow augmented) will result in total depletion of the aquifer. Findings of Fact 9, 10.

Total depletion of the aquifer will adversely affect all appropriations from the aquifer. Increasing the discharge rate of the aquifer will increase the rate of storage reduction. Finding of Fact 11. Thus, under present aquifer conditions (continuing decline in storage), Applicant's proposed appropriation will hasten the onslaught of the adverse effects of storage depletion on other appropriators in the aquifer.

The Examiner holds that the hastening of a foreseeable adverse effect in itself constitutes an adverse effect. Accordingly, absent evidence of an imminent increase in aquifer recharge at least equal to the reduction which Applicant's appropriation would cause, i.e., .775 acre-foot per year, the Examiner must conclude that the proposed appropriation will adversely affect prior appropriators on the source by hastening the depletion of the aquifer and thus contributing to the ultimate demise of their wells.

9. The proposed use, domestic use, is a beneficial use of water. MCA § 85-2-102.

10. The proposed use will not interfere with other planned uses or developments for which a permit has been issued or for which water has been reserved. Finding of Fact 14.

11. The proposed means of diversion, construction and operation hereunder, a cased well and storage tanks, are reasonable and customary for domestic water supply and are adequate to provide same. Findings of Fact 6, 13.

12. Unappropriated water is available at times when Applicant can put water to the use proposed, in the amount Applicant seeks and throughout the period Applicant seeks to appropriate the amount requested is available. Finding of Fact 13.

13. As it is the ongoing depletion of aquifer storage which occasions the adverse effect described above (Conclusion of Law 8), augmentation of aquifer recharge sufficient to provide at least the .775 acre-foot per annum Applicant wishes to withdraw should preclude the probable adverse effect of Applicant's proposed appropriation.

Testimony given at the hearing indicates that a plan to introduce recharge to the aquifer is being contemplated by appropriators in the Larson Creek groundwater area. Alternatively, Applicant may be able to devise a plan to supply the aquifer with .775 acre-foot of recharge annually. Finding of Fact 15.

THEREFORE, and because adverse effect could be eliminated with recharge augmentation, and because all other criteria have been met, the Examiner proposes the following:

INTERLOCUTORY ORDER

That a final decision regarding issuance of Beneficial Water Use Permit No. 64545-76H by Mike McBride be postponed for a period of three years from the date hereof. At the end of the three year period (or sooner if requested by Applicant), the department will evaluate aquifer recharge efforts made either by Applicant alone, or in concert with other appropriators in the Larson Creek Controlled Groundwater Area. If the department finds that such efforts have resulted in augmentation of recharge to the aquifer by at least .775 of an acre-foot per annum, the Permit will be granted with the condition that Applicant may only divert to the extent of such augmentation, and with such other and further conditions as may be necessary to protect other appropriators. If the department finds no such recharge augmentation, or finds that such augmentation will more often than not be less than .775 acre-foot per annum, the Permit will be denied.

Nothing herein shall be construed to authorize Applicant to appropriate water for recharge purposes without first complying with all requirements of law or rule otherwise required to make such appropriation.

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the Proposed Order, including the legal land descriptions. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (1520 E. Sixth Avenue, Helena, MT 59620-2301); the exceptions must be filed within 20 days after the proposal is served upon the party. MCA §2-4-623.


Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed.

Any adversely affected party has the right to present briefs and oral arguments pertaining to its exceptions before the Water Resources Division Administrator. A request for oral argument must be made in writing and be filed with the Hearing Examiner within 20 days after service of the proposal upon the party. MCA §2-4-621(1). Written requests for an oral argument must specifically set forth the party's exceptions to the proposed decision.

Oral arguments held pursuant to such a request normally will be scheduled for the locale where the contested case hearing in this matter was held. However, the party asking for oral argument may request a different location at the time the exception is filed.

Parties who attend oral argument are not entitled to introduce evidence, give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will be limited to discussion of the evidence which already is present in the record. Oral argument will be restricted to those issues which the parties have set forth in their written request for oral argument.

DONE this 29 day of September, 1988.


Robert H. Scott, Hearing Examiner
Department of Natural Resources
and Conservation
1520 E. 6th Avenue
Helena, Montana 59620-2301
(406) 444 - 6625

CERTIFICATE OF SERVICE

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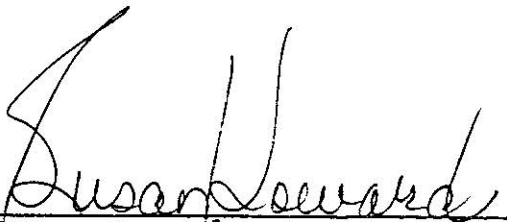
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